U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5527222

Date: FEB. 7, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a clinical chemist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner claims to be "one of the top researchers in the field of laboratory testing for the diagnosis of disease in pediatrics in the United States and the World." The Petitioner earned a master's degree in organic chemistry at [redacted] University, where she then remained as an instructor for several years before earning a doctorate at [redacted] University. During her doctoral studies, she was also a clinical chemistry intern at the [redacted] Clinic. When she filed the petition, the Petitioner was a postdoctoral fellow at [redacted] Children's Hospital, a teaching hospital of [redacted] College of Medicine.[1]

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have met five criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director determined that the Petitioner satisfied only two criteria, numbered (iv) and (vi). We agree, and will not disturb those determinations. The Petitioner does not contest the denial of criterion (i), and has therefore effectively abandoned the issue.[2]

Because the Petitioner has satisfied two of the regulatory criteria, she must satisfy one more in order for the case to proceed to a final merits determination. After reviewing all of the evidence in the record,

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[1] The appellate brief refers to this employment in the present tense, but the appeal form shows that the Petitioner has relocated from Texas to New York.

[2] *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also*, *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

we conclude that the Petitioner has met only the two criteria granted above. We discuss the two remaining criteria below.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

We agree with the Director's finding that the Petitioner has not met the requirements of this criterion.

The Petitioner claims that several memberships meet the requirements for this criterion. The record, however, does not show that any of these memberships require outstanding achievements. Instead, the record shows that the requirements for the Petitioner's level of membership include factors such as educational level and experience.

For example, materials from Iota Sigma Pi, National Honor Society for Women in Chemistry, state: "To be eligible, the applicant must . . . hold a Ph.D. in chemistry or [related] field." Associate fellowship in the Association of Clinical Scientists is open to "Clinical Scientists who hold an earned doctorate degree, but who are still in a postdoctoral training program." The Petitioner does not explain how participation in routine postdoctoral training is an outstanding achievement.

The Petitioner has not established that academic degrees, experience in the field, and professional activities such as research are outstanding achievements. Rather, they are either core requirements for employment in a given field, or the expected result of employment in that field.

On appeal, the Petitioner discusses the membership requirements in greater detail and identifies the members of several membership committees, but the involvement of such committees does not establish that those associations require outstanding achievements of their members. Similarly, some organizations require sponsorship or recommendations from existing members, but this requirement does not establish that the associations require outstanding achievements as judged by recognized national or international experts.

While the Petitioner has documented her membership in several associations, she has not shown that any of them require outstanding achievements of their members, as judged by recognized national or international experts in their fields.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See*

Silverman v. Eastrich Multiple Investor Fund, L.P., 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner has proposed changes to various testing protocols. For example, she found that it saved time and money to perform certain [redacted] screening tests in-house rather than sending tests to an outside laboratory. Changes at one institution do not reflect major significance in the field as a whole. We note that the Petitioner often publishes her findings, making them available throughout the field, but the record does not show the extent to which other institutions have adopted and implemented the changes that she has proposed.

The Petitioner has also participated in validation of assays, but the record does not reflect the extent to which her work has affected the overall outcome of the validation studies. For instance, the record is silent as to whether the Petitioner alone performed the validations, or was one member of a larger group. The record does not establish whether assay validation is a relatively rare occurrence or a common and routine element of clinical chemistry. This absent information may affect the intrinsic significance of a given assay validation. The Petitioner stated that one of her studies showed that an assay performs as intended.

In another example of her claimed contributions to the field, the Petitioner studied recent changes to the guidelines for diagnosis of [redacted]), to examine "whether the change in guidelines would have impacted [redacted] detection." The Petitioner "discovered that the new guidelines enhanced the probability of identifying individuals at risk for [redacted]" The Petitioner did not explain how this amounts to an original contribution of major significance, given that (1) the new guidelines were already in use; (2) the Petitioner played no role in developing those guidelines; and (3) the Petitioner's work did not result in any modifications to those guidelines.

In a further instance, the Petitioner and her collaborators studied how various amounts of [redacted] interfere with certain immunoassays. In response to a request for evidence, the Petitioner stated that she "discovered interference by [redacted] . . . , which is significant to the field because it led to hospitals' changing their entire platform for [redacted] testing." Previously, however, the Petitioner had acknowledged that "it has been reported previously that [redacted] interference can lead to falsely elevated or low results." The Petitioner's own published article cited several earlier articles about [redacted] interference. Therefore, the inquiry into [redacted] was not, itself, an original contribution. The Petitioner asserted, nevertheless, that her work was significant because "none of those [earlier] studies were conducted with different concentrations of [redacted]" The Petitioner co-authored a journal article that recommended the use of "immunoassay platforms that do not use the [redacted] interaction."

The director of client services for "an organization that provides quality control tools, training, and technology for medical laboratories" called the Petitioner's [redacted] article "a critical addition to the literature" because the extent of [redacted] interference had previously been underestimated. The record, however, does not establish the extent to which the Petitioner's work has had an impact and influence regarding the affected test.

An assistant professor at [redacted] University states: "at our institution, we are considering using the data generated by [the Petitioner's] research to evaluate [redacted] interference on our automated chemistry

analyzer." It bears noting that this individual and the Petitioner "trained together at [redacted] College of Medicine," both under a faculty member who co-authored the [redacted] paper.

The director of the Central Clinical Laboratory and Central Processing at the [redacted] Clinic stated that the Petitioner's "work on [redacted] interference has led to changes in the entire platform for [redacted] testing . . . and has been implemented by many hospitals, including [redacted] Children's Hospital." He did not say whether or not the [redacted] Clinic was among the "many hospitals," and the vague wording of the assertion does not establish the extent of the Petitioner's impact. Furthermore, because several prior studies had already identified the [redacted] issue, it is not clear to what extent the Petitioner's work, in particular, led to widespread changes in testing procedures.

The record provides additional examples of the Petitioner's work, but, as above, the Petitioner did not provide evidence of impact and influence or otherwise show that her work has had major significance in the field. Discussion of the seriousness of a particular disease or the importance of a particular test does not suffice in this respect.

The Petitioner has not shown that she has made original contributions of major significance in her field.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.